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Preparatory Committee
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STATUS OF PREPARATION OF PUBLICATIONS, STUDIES AND DOCUMENTS FOR THE WORLD CONFERENCE

Note by the Secretariat

Addendum

Contribution by the Foundation for Service, Peace and Justice in Latin America

The attention of the Preparatory Committee is drawn to a contribution submitted by the Foundation for Service, Peace and Justice in Latin America on behalf of the following group of non-governmental human rights organizations in Argentina: Grandmothers of the Plaza de Mayo, American Association of Jurists (Argentine Branch), Association of Former Missing Detainees, Centre for Legal and Social Studies, Relatives of Persons Missing and Detained on Political Grounds, Human Rights League of Argentina, Mothers of the Plaza de Mayo (Founding Branch), Ecumenical Movement for Human Rights and Service, Peace and Justice in Latin America, some of which have been granted consultative status with the Economic and Social Council of the United Nations. This contribution was submitted as an information document to the regional meeting for Latin America and the Caribbean which was held in San José, Costa Rica, from 18 to 22 January 1993.

GE. 93-12304 (E)

[19 January 1993]

CONTRIBUTIONS BY NON-GOVERNMENTAL ORGANIZATIONS IN ARGENTINA

1. The Argentine non-governmental organizations Grandmothers of the Plaza de Mayo, American Association of Jurists (Argentine Branch), Association of Former Missing Detainees, Centre for Legal and Social Studies, Relatives of Persons Missing and Detained on Political Grounds, Human Rights League of Argentina, Mothers of the Plaza de Mayo (Founding Branch), Ecumenical Movement for Human Rights and Service, Peace and Justice, some of which have consultative status with the Economic and Social Council,

2. Conscious of the opportunity represented by the forthcoming World Conference on Human Rights, to make progress in protecting and promoting the human rights of all peoples, and particularly those who are most vulnerable in Latin America and the Caribbean and other regions of the world, wish to submit for consideration the following contributions on the human rights situation in Argentina and the importance of strengthening international action to safeguard them.

I. UNIVERSAL AND REGIONAL INSTRUMENTS

3. The defence of human rights in international forums is an important tool, we believe, because of the constant struggle to implement fully the substantive rights of individuals and peoples.

4. The appropriate mechanisms for such purposes must be strengthened (and not weakened) by Member States. The attitude of the State of Argentina is far from favourable to the existence, permanence, safeguarding and extension of these mechanisms.

5. By way of example, we shall highlight certain attitudes. The reservation made by Argentina on ratifying the Pact of San José, Costa Rica, excluding from the jurisdiction of international tribunals questions inherent in the economic policy of the Government, allows it to use its "adjustment" measures in such a way as to violate human rights on a massive scale. Furthermore, it has sought an advisory opinion from the Inter-American Court of Human Rights questioning the powers of the ICHR to monitor implementation of the provisions of the Convention. In addition, the courts in Argentina practically unanimously disregard the requirement of the Pact of San José regarding the right of an accused person to be released from prison when a reasonable time has elapsed without judgement being rendered in the case.

6. The incorporation of immunity from prosecution into the structure of the current system is clearly an obstacle to fulfilment of the international commitments which were assumed. In addition, there is an excessive concentration of powers in the hands of the Executive, to the detriment of the powers which should be exercised by other branches of government (the Legislature and the Judiciary), an imbalance which increases the fragility of the transition to democracy. Increasingly the so-called emergency decrees, as well as others, are transferring unprecedented powers to the executive (with abdication by the other bodies), which reinforce authoritarianism and not republican institutions. It is associated with the needs of the economic

"adjustment" strategy and also with a level of corruption in the administration of State property which arouses suspicion concerning a good many persons in positions of responsibility.

7. The laws on immunity from prosecution which were promulgated provoked a condemnation by the ICHR. Despite that, and almost immediately after the publication of this paper, President Menem himself made statements which constitute a vindication of the repressive measures applied during the last dictatorship. In addition, some magistrates are distraining upon the goods of relatives of victims of enforced disappearances for court costs while denying them the rights invoked and preventing them from seeking the truth through the judicial process, thus perverting the recommendations of ICHR.

II. AN ESSENTIAL CLARIFICATION

8. We must emphasize that the democratization efforts in the continent have not succeeded in overcoming the traces of authoritarianism which persist in the current structure of the State.

9. The implementation of "adjustment" policies entails redefining the role of the State, which in recent decades has been surrendering its role in the economic and social field, retaining only its repressive jurisdictional powers in favour of a dominant social class.

10. The existence of electoral systems alone does not imply that democracy has been achieved. It is necessary to define, using appropriate forms of analysis, which values, principles and guarantees States and non-governmental organizations are going to defend as appropriate to a genuinely democratic system, complying with the parameters of international human rights treaties. The current system violates economic and social rights, and thus conspires against the existence and safeguarding of political rights.

11. Government representatives try in every way to stifle countries which, like the Republic of Cuba, are trying to create a system that does not marginalize the majority of its people, and to advance towards social democratization. They should be respected under the principle of self-determination of peoples.

12. The existence of such interference could lead to the interpretation that within the United Nations itself there is an attempt to put forward a model which not only claims to be "unique" but also claims to impose itself universally: the capitalist system. This trend is alien to the need to guarantee peoples the possibility of choosing within a pluralistic framework.

III. THE SITUATION IN ARGENTINA

13. We now turn to the specific situation of human rights in Argentina.

14. Rules on immunity from prosecution: Act No. 23,492 (23 December 1986) which establishes a retroactive prohibition of action by the State in prosecuting cases of Genocide (the "Finality" Act), Act No. 23,521 (5 June 1987), which establishes justification "on grounds of due obedience" of the conduct of those who committed crimes against humanity, and the

presidential pardons (October 1989 and December 1990) in favour of hundreds who were still being tried or were under sentence because of public pressure, including the members of the Military Juntas of the dictatorship, who bear the greatest responsibility for State terrorism.

15. Condemnation by the ICHR: the above-mentioned laws on immunity from prosecution were criticized by the ICHR in its report of 4 November 1991. Despite the reply of the Government of Argentina in January 1992, the report was finally approved on 2 November 1992, and the ICHR ordered its publication. The Government has not implemented the recommendations of the report.

16. Continued torture: Beatings, the "dry submarine" (inducing asphyxia by placing a plastic bag over the head), etc. are becoming more widespread in police stations. The Ministry of the Interior reviewed and classified 700 cases brought before judges in the national capital following various torture complaints; all ended in acquittal.

17. Political prisoners: Some 25 are so-called permanent prisoners (as opposed to temporary prisoners, who run into the thousands). Although human rights bodies were originally permitted to visit them, the authorization was subsequently withdrawn. Some 20 belong to the "All for the Nation Movement" and attacked the Tablada barracks on 23 January 1989; in October 1992 an appeal was made to the ICHR seeking review of the sentences (several of which are life sentences), on the grounds of irregularities in the proceedings of the court which tried them; it was also reported that some of the prisoners were summarily executed after surrendering.

18. Disappeared children: It is estimated that 217 were abducted during the dictatorship; 51 have now been located, including some who are undergoing the arduous process of being returned to their natural families. The judiciary has on various occasions been accused of negligence in handling the proceedings relating to return.

19. Ordinary prisoners: Of the 20,000 current prisoners, 4,500 come under "federal" administration; they have rioted on 129 occasions in the last six years to protest against their situation. As a result, the Ministry of Justice decided to set up a "Commission to study the prison situation and propose improvements" in which human rights bodies were included; subsequently the Ministry sought to dissolve it by ceasing to call meetings. Nevertheless the human rights bodies and lawyers' associations completed their report, indicating extremely serious deficiencies in lighting, sanitary installations, food, medical services (according to official figures, 12 per cent of prisoners are carriers of the AIDS virus), etc. Seventy per cent have not been sentenced in respect of the offences with which they are charged. Fifty one per cent of the sentences actually passed relate to offences against property (to protect the wealthiest) and these carry the severest and most disproportionate penalties.

20. Trigger-happy: There are virtual summary and extrajudicial executions of young people in poor districts in connection with alleged "clashes" between police officers and delinquents. In this respect, immunity is tending to become the general rule as a method of "social control". Despite that, a public body, the Commission against Police and Institutional Repression, won

convictions against 19 of these killers, who were sentenced to a total of 233 years' imprisonment. Nevertheless, the shortage of funds, lack of lawyers, fear, etc. work in favour of the existing system.

21. Police edicts: The Organic Law on the Federal Police empowers its Chief (with headquarters in the capital), to classify certain "contraventions" as offences against the law, to set a scale of penalties for each case (arbitrary "legislative" authority), and then to apply these rules to particular cases ("judicial" power). Some 30,000 convictions are pronounced annually in this manner, without any judicial proceeding; appeal is possible, but the brief period of 24 hours allowed means that appeals were lodged in only 500 cases. In addition, the Federal Police Chief has the power of preventive arrest "for investigation of the facts" (in the capital up to 10 hours and in the province of Buenos Aires up to 48 hours). Each year the Chief sentences the population to 1,000 years of imprisonment, without the intervention of the courts.

22. Social rights: The claimed stability does not exist, as accumulated inflation, measured in constant dollars, is more than 36 per cent since the beginning of the current economic plan. Similarly, comparing take-home pay with the basket of basic needs for the same period, the value of take-home pay has fallen by 50 per cent.

23. Fifteen million people (45 per cent of the total population of the country) fall below the "poverty line" (which is defined as the cost of the most basic food for a working-class family). Almost 18 million (50 per cent of the population) are not connected to a sewage system. In the capital, during the last nine years, the number of people living in makeshift housing (mainly built of waste materials) has, increased by 305 per cent (from 12,000 to 51,000). Between 1980 and 1991, the unemployment rate doubled. Spending on education is 1.9 per cent of gross domestic product, a proportion similar to that in the least developed countries of Africa.

24. Pensioners are in particularly dire straits. While active workers contribute annually a total of 4 billion dollars to pension funds to provide for their old age, when they reach retirement, they receive only 150 dollars, a quite ridiculously small sum to acquire medicines and food in Argentina. As a result, more than 20 pensioners committed suicide during 1992 and there are repeated mass demonstrations in this sector which are supported by the public. The plan to "privatize" the administration of the above-mentioned 4 billion dollars only increases unease.

25. In recent years there has been retrograde legislation aimed at drastically reducing protection of employment conditions, accentuated in 1992 with the decrees on "deregulation" and "flexibility" in employment, which deprive this sector of guarantees of stability, wages and union rights.

26. Dependence: Seventy per cent of our exports are farm products, whose international prices have fallen by 15 per cent, while the prices of the goods which we must import have increased by 43 per cent. Added to this deterioration in the terms of trade is the fact that a large part of the foreign exchange earned by exports goes to pay interest on the illegitimate external debt which bears heavily on us. This and other factors (particularly the flight of capital and the repatriation of profits from Argentina by

multinational corporations) affect the most important right that we have: the right to national self-determination, and the right not to be deprived of the goods and resources essential to our stability and development.

27. In the context described above, a real breakdown of social and legal protection has occurred.

28. Against this background, the Argentine Government ventures to criticize the internal problems of the Republic of Cuba, making declarations and taking positions which compromise Argentina with regard to the principle of self-determination of peoples.

IV. LOOKING AHEAD TO THE WORLD CONFERENCE ON HUMAN RIGHTS

29. The activity of non-governmental organizations in Argentina is increasingly treating these complaints as banners under which true liberation, social justice and progress can be pursued in Argentina. That is why we believe it important that they should be included in the deliberations of the fourth session of the Preparatory Committee and the World Conference on Human Rights.

30. We attach special importance to the inclusion in the agenda of the Conference of the problem of immunity from prosecution, which constitutes a systematic violation of the right to justice that threatens everything that has been achieved in the area of international human rights standards and protection, with serious consequences for the enjoyment of human rights and for real opportunities to build democracy. We support the preparation and strengthening of effective international instruments and mechanisms to combat this scourge, particularly concerning the necessary creation of powers to sanction those States involved.

31. We also believe that the World Conference should as a matter of priority apply itself to analysing not only the right to life, so fundamental in itself, but also the way in which that right can be implemented with dignity. Within each State, as well as in the international system, it is essential to avoid human beings being considered as just another item in the global market, a market which some claim to be the world arbiter of human relations, ignoring the consequences, the aspirations of our peoples and the evolution of international law on human rights.

32. To this end, and so that the World Conference on Human Rights may satisfy the expectations placed in it, we propose that the participation of non-governmental organizations should be assured. Here, as in the various forums for discussion and decision-making in the United Nations and under the relevant covenants and conventions, we believe it is essential to adopt measures aimed at extending and facilitating direct participation by non-governmental organizations, which would also contribute to the democratization of the system itself. It is through its clear interest, experience and work that there will be real opportunities to advance the globally established objectives of the Conference and the international system for protecting and promoting human rights.